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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

A[redacted] F[redacted] A[redacted] M[redacted]

Petitioner,

v.

SERGIO ALBARRAN, et al.,

Respondents.

No. 3:25-cv-10492-AMO

RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

I. INTRODUCTION

The legal issues presented in this Petition for Writ of Habeas Corpus concern the statutory authority for U.S. Immigration and Customs Enforcement's ("ICE") detention of Petitioner, whether Petitioner is entitled to a bond hearing, and whether that bond hearing must be held before Petitioner is detained.

As a noncitizen subject to expedited removal who was found to have a credible fear of persecution, Petitioner's detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii) pending further consideration of his application for asylum. And because Petitioner is physically present in the United States without having been admitted, he is treated for constitutional purposes as if stopped at the border. Therefore, as regards his immigration detention, he is entitled only to the process due to him by statute. Accordingly, the Court should deny Petitioner's requests for relief.

Should the Court decide that Petitioner is subject to detention under 8 U.S.C. § 1226(a), the appropriate remedy is to order a bond hearing, not to order immediate release, and for Petitioner to bear the burden to demonstrate flight risk or danger to the community.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Colombia who entered the United States without inspection, admission, or parole at or near Brownsville, Texas on July 20, 2024. *See* Declaration of Deportation Officer Thomas Auer ("Auer Decl.") ¶ 4. On the same date, U.S. Customs and Border Protection ("CBP") Officers apprehended and detained Petitioner. *Id.* On July 21, 2024, CBP processed Petitioner for Expedited Removal under section 235(b)(1) of the Immigration and Nationality Act ("INA" or "Act"). *Id.* ¶ 5; Exh. 1. Petitioner did not claim fear of removal at this time. *Id.* ICE scheduled to remove Petitioner on July 30, 2024, which was subsequently postponed to August 8, 2024. *Id.*

On August 2, 2024, Petitioner expressed a fear of returning to Colombia. *Id.* ¶ 6. DHS referred Petitioner to U.S. Citizenship and Immigration Services ("USCIS") for a credible fear review with an Asylum Officer. *Id.* ¶ 6. On August 8, 2024, USCIS conducted a credible fear interview with Petitioner and found that Petitioner did not establish a credible fear of persecution or torture if he were returned to Colombia. *Id.* ¶ 7; Exh. 2. Petitioner requested review of this decision, so USCIS referred it to an Immigration Judge ("IJ") for review. *Id.*; Exh. 2. On August 21, 2024, an IJ reviewed DHS's negative

credible fear determination and vacated that decision. *Id.* ¶ 8; Exh. 3.

On September 11, 2024, ICE released Petitioner on Interim Parole under INA § 212(d)(5)(A). *Id.* ¶ 9. ICE placed Petitioner on the Intensive Supervision Appearance Program ("ISAP"), with reporting requirements, as a condition of his release. *Id.* On April 17, 2025 and August 7, 2025, Petitioner violated his ISAP conditions by failing to complete check-ins. *Id.* ¶¶ 10-11. On December 3, 2025, ICE arrested Petitioner due to his ISAP violations. *Id.* ¶ 12. Petitioner was detained pursuant to INA § 235(b)(1)(B)(ii); 8 U.S.C. § 1225(b)(1)(B)(ii). *Id.*

On December 6, 2025, Petitioner filed a Petition for Writ of Habeas Corpus, and an Ex Parte Motion for Temporary Restraining Order ("TRO"), against Respondents. ECF Nos. 1 & 2. On December 7, 2025, this Court issued a TRO. ECF No. 4. The Court ordered Respondents to immediately release Petitioner from Respondents' custody pending full briefing and hearing on the underlying petition and/or a preliminary injunction regarding re-detention. *Id.* That same day, ICE released Petitioner as ordered by this Court. Auer Decl. ¶ 13. On December 9, 2025, ICE placed Petitioner into removal proceedings, as an alien present without admission or parole, and charged him with removability under INA § 212(a)(6)(A)(i). *Id.* ¶ 14.

III. LEGAL BACKGROUND

Section 1225 applies to an "applicant for admission," defined as an "alien present in the United States who has not been admitted" or "who arrives in the United States." 8 U.S.C. § 1225(a)(1).[1] "[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1), known as "expedited removal," applies to "arriving aliens" and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid document." *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). An alien is subject to expedited removal if, as relevant here, the alien (1) is inadmissible because he or she lacks a valid entry document; (2) has not "been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility"; and (3) is among those whom the Secretary of Homeland

[1] This section uses the term "alien" for the sake of clarity because that is the term of art used by Congress in the relevant statute.

Security has designated for expedited removal. *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 109 (2020). When Petitioner entered the country, those whom the Secretary of Homeland Security had designated for expedited removal were, among others, aliens "encountered within 14 days of entry without inspection and within 100 air miles of any U. S. international land border."[2] 69 Fed. Reg. 48879 (2004). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A).

If an alien placed in expedited removal "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii). "If the officer determines at the time of the interview that [the] alien has a credible fear of persecution . . . the alien *shall be detained* for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien does not indicate an intent to apply for asylum, does not express a fear of persecution, or is "found not to have such a fear," they "shall be detained . . . until removed" from the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

IV. ARGUMENT

A. Legal Standard

A preliminary injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). The moving party must show that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

The purpose of a preliminary injunction is to preserve the status quo pending final judgment rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). "A preliminary injunction can take two forms." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserves the status quo pending a determination of

[2] Though the Secretary of Homeland Security has since expanded the designation of those subject to expedited removal, this was the designation in effect at the time Petitioner entered the United States and was placed in expedited removal.

the action on the merits.'" *Id.* (internal quotation omitted). "A mandatory injunction orders a responsible party to take action," as Petitioners seek here. *Id.* at 879 (internal quotation omitted). "A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* "In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* Where plaintiffs seek a mandatory injunction, "courts should be extremely cautious." *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted). The moving party "must establish that the law and facts *clearly favor* [their] position, not simply that [they are] likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis original).

B. Petitioner Is Subject to Mandatory Detention Under 8 U.S.C. § 1225(b)(1)(B)(ii).

Petitioner claims, inter alia, that his ongoing detention violates his procedural due process rights under the Fifth Amendment. ECF No. 4 at 3. Petitioner argues that he has a substantial interest in remaining out of custody, and that the Due Process Clause entitles him to a bond hearing before an IJ prior to any arrest or detention. *Id.*

The Court's order granting Petitioner's temporary restraining states that the order "accords with many other recent grants of temporary relief in similar circumstances." ECF No. 4 at 5. However, the cases cited by the Court involved Petitioners detained by ICE based on 8 U.S.C. § 1225(b)(2), not 8 U.S.C. § 1225(b)(1)(B)(ii), which is the detention authority applicable to Petitioner in the instant case.

Based on the plain text of 8 U.S.C. § 1225(b)(1)(B)(ii), Petitioner is subject to mandatory detention while his application for asylum is under consideration. Under 8 U.S.C. § 1225(a)(1), an "applicant for admission" is defined as an "alien present in the United States who has not been admitted or who arrives in the United States." As explained above, applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(1) – the provision relevant here – applies because Petitioner is present in the United States without having been admitted and is covered by the Secretary of Homeland Security's 2004 designation of those noncitizens as subject to expedited removal. *See* Auer Decl. ¶ 4; 69 Fed. Reg. 48879 (2004). The expedited removal statute mandates detention when an immigration officer

determines that the alien has a credible fear of persecution.[3] *See* 8 U.S.C. § 1225(b)(1)(B)(ii) ("If the officer determines at the time of the interview that [the] alien has a credible fear of persecution . . . the alien shall be detained for further consideration of the application for asylum.") (emphasis added); *see also Matter of M-S-*, 27 I. & N. Dec. 509, 519 (AG 2019) ("all aliens transferred from expedited to full [removal] proceedings after establishing a credible fear are ineligible for bond").

Here, DHS initially found that Petitioner lacked a credible fear. *See* Auer Decl. ¶ 7; Exh. 2. But following review, the IJ vacated the negative credible fear finding and placed Petitioner in removal proceedings. *See id.* ¶ 8; Exh. 3. This squarely places Petitioner under 8 U.S.C. § 1225(b)(1)(B)(ii), which requires that he "shall be detained for further consideration of the application for asylum."

The Supreme Court has been clear that noncitizens similarly situated to Petitioner do not have a constitutional right to procedures beyond those afforded to them by statute. In *Thuraissigiam*, the Supreme Court addressed the due process rights of individuals like Petitioner, i.e. noncitizens detained shortly after entering the United States without admission that are then placed in expedited removal. 591 U.S. at 138-40. The Supreme Court stated that such individuals have no due process rights "other than those afforded by statute." *Id.* at 107; *see also id.* at 140 ("[A]n alien in respondent's position has only those rights regarding admission that Congress has provided by statute."). The Supreme Court noted that its determination was supported by "more than a century of precedent." *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).

In *Jennings*, 583 U.S. at 296-303, the Supreme Court evaluated the proper interpretation of 8 U.S.C. § 1225(b). The Supreme Court stated that, "[r]ead most naturally, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain proceedings have concluded." *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1) nor § 1225(b)(2) "impose[] any limit on the length of detention" and "neither § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings." *Id.* The Supreme Court added that the sole means of release for noncitizens detained pursuant

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[3] The statute also requires detention when an alien does *not* have a credible fear of persecution. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300 ("That express exception to detention implies that there are no other circumstances under which aliens detained under [8 U.S.C.] § 1225(b) may be released.") (emphasis in original). "In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings[.]" *Id.* at 302.

Since the Supreme Court's decision in *Thuraissigiam*, numerous published decisions have acknowledged *Thuraissigiam*'s impact on the precise Fifth Amendment Due Process Clause issue raised in this petition: Does an alien detained under 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond hearing after being detained for a certain period of time? Many courts have found no. *See Rodriguez Figueroa v. Garland*, 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021); *see also Mendoza-Linares v. Garland*, No. 21-CV-1169 BEN (AHG), 2024 WL 3316306, at *2 (S.D. Cal. June 10, 2024) ("[T]he Court finds that Petitioner has no Fifth Amendment right to a bond hearing pending his removal proceedings."); *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 WL 3103811, at *3 (S.D. Cal. Apr. 25, 2023) (same).

In short, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii), which provides, absent discretionary parole, that when an alien has a credible fear of persecution, "the alien shall be detained for further consideration of the application for asylum." As the statutory authority Petitioner is detained under does not afford him a right to immediate release or a bond hearing before an IJ, the Court should reject his claim that his detention violates the Fifth Amendment's Due Process Clause and deny his requested relief. *See Thuraissigiam*, 591 U.S. at 107, 140.

C. Petitioner's Previous Release on Interim Parole Does Not Create A Liberty Interest

Petitioner incorrectly claims that his prior release was pursuant to 8 U.S.C. 1226(a). *See* ECF No. 50-56. As described above, the Supreme Court has stated that *the sole means* for release of a noncitizen subject to expedited removal is through temporary or interim parole under 8 U.S.C. § 1182(d)(5)(A). Thus, when Respondents released Petitioner from detention on September 11, 2024, it

was pursuant to an exercise of DHS' discretion under 8 U.S.C. § 1182(d)(5)(A) while DHS was detaining Petitioner pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii).

Respondents' exercise of discretion to release Petitioner under 8 U.S.C. § 1182(d)(5)(A) does not give rise to a liberty interest. Petitioner's cited authority is inapposite. *See* ECF No. 55. In *C.A.R.V. v. Wofford*, No. 1:25-CV-01395 JLT SKO2025 U.S. Dist. LEXIS 216277, at *27 (E.D. Cal., Nov. 1, 2025), the court found that a previous release *under 8 U.S.C. 1226(a)* created a liberty interest. And in *Lopez Benitez v. Francis,* 795 F. Supp. 3d 475 (S.D.N.Y. 2025), the liberty interest recognized by the court similarly arose following a release under 8 U.S.C. 1226(a). *See also Pinchi v. Noem*, --- F. Supp. 3d ----, No. 25-cv-05632-PCP, 2025 WL 2084921, at *2-6 (N.D. Cal. July 24, 2025) (stating that a noncitizen's prior release on her own recognizance, i.e. under 8 U.S.C. 1226(a), created a liberty interest).

Contrary to Petitioner's claims, his prior release under 8 U.S.C. § 1182(d)(5)(A) was not because Respondents "expressly determined that he posed little if any flight risk or danger to the community." ECF No. 1 ¶ 57. Instead, Petitioner's prior release was based on a determination that "urgent humanitarian reasons or significant public benefit" existed to support Petitioner's release. 8 U.S.C. § 1182(d)(5)(A). And Petitioner's subsequent redetention complied with procedures established by this statute and its implementing regulations for the revocation of parole. *See id.* ("[W]hen the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled."); 8 C.F.R. § 212.5(d); 8 C.F.R. § 212.5(e)(2)(i). Petitioner had been placed on ISAP with reporting requirements but he violated the ISAP conditions. Auer Decl. ¶ 9-12. Because Petitioner's release and redetention complied with the relevant statutes and regulations, which as described above is the limit of his due process guarantee, he is not entitled to a liberty interest under the Fifth Amendment. Absent a liberty interest, the test from *Mathews v. Eldridge*, 424 U.S. 319 (1976) does not apply.

D. To the Extent the Court Considers Petitioner Detained Under § 1226(a), It Should Order a Bond Hearing to be Held by an Immigration Judge Rather Than Immediate Release.

Should this Court determine that Petitioner's detention is subject to 8 U.S.C. § 1226(a), as Petitioner contends, the appropriate remedy is to order a bond hearing before an IJ during which the IJ

can properly determine in the first instance whether Petitioner is a flight risk or danger to the community. This bond hearing is appropriately held post-detention. Under Section 1226(a), individuals are not guaranteed pre-detention review and may instead only seek review of their detention by an ICE official once they are in custody—a process that the Ninth Circuit has found constitutionally sufficient in the prolonged-detention context. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196–97 (9th Cir. 2022). Moreover, at any bond hearing under Section 1226(a), Petitioner must bear the burden of demonstrating that he is not a flight risk or danger to the community. *See id.* at 1197 (citing *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006)).

This approach to a motion for preliminary injunctive relief—granting release *unless* an individualized bond hearing is held before an IJ within a specified amount of time—has been followed by courts in other districts when addressing similar arguments by petitioners. *See, e.g.*, *Garcia v. Noem*, No. 25-cv-02771, 2025 WL 2986672, at *6 (C.D. Cal. Oct. 22, 2025) ("Respondents are enjoined from continuing to detain Petitioner unless they provide him with an individualized bond hearing before an immigration judge under 8 U.S.C. § 1226(a) within ten (10) days of the date of this Order."); *Javier Ceja Gonzalez v. Noem*, No. 25-cv-02054, 2025 WL 2633187, at *6 (C.D. Cal. Aug. 13, 2025) (ordering the government to "release Petitioners or, in the alternative, provide each Petitioner with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven (7) days of this Order"); *Garcia v. Noem*, No. 25-cv-02180, 2025 WL 2549431, at *8 (S.D. Cal. Sept. 3, 2025) ("Respondents must provide Petitioners with individualized bond hearings under § 1226(a) within fourteen days of this Order. Respondents shall not deny Petitioners' bond on the basis that § 1225(b)(2) requires mandatory detention."); *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025) ("the appropriate remedy is to order the Immigration Court to conduct a new hearing at which it considers Gomes' eligibility for bond under Section 1226(a)"). Respondents thus request that this Court adopt this approach if the Court determines that Section 1226(a) applies.

V. Conclusion

In light of the foregoing, Respondents request that the Court deny Petitioner's request for a preliminary injunction and dismiss his habeas petition.

DATED: December 12, 2025

Respectfully submitted,

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